IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2243 of 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEERUBEN FIROZBHAI CHARNIA

Versus

CHIEF OFFICER

Appearance:

MR RD RAVAL for Petitioner No. 1-2

MR NAVIN K PAHWA for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/08/2004

ORAL JUDGEMENT

1. By way of this petition the petitioners have prayed for a direction to the respondents to consider their case for regularisation.

2. According to the petitioners they were working since 1991 and 1993 respectively and they were given periodical orders from time to time. The grievance of the petitioners is that though they were working on full time basis, their services were not regularised and regular pay scale was not given to them. Under the circumstances the present petition has been filed.

3. Learned counsel for the respondent submitted that according to section 271 of the Gujarat Municipalities Act, to appoint any employee, the Municipality has to issue advertisement in the newspaper and thereafter the qualified candidates are called from the employment exchange. Then the candidates suggested by the employment exchange are called for the interview and the candidate who is selected by the Selection Committee will be appointed on the regular post. In the case of the petitioners they were not appointed after following due process mentioned in section 271 of the Act. Therefore they cannot claim permanency on the said post.

4. Even otherwise, in view of the decision of the Full Bench of this Court dated 9.7.2004 in the case of Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union in Special Civil Application No.5746/1999 and other allied matters, more particularly, paragraphs 12.1.13 and 12.1.15, prayer for regularisation cannot be granted. The said paragraphs read as under:

> 12.1.13 Even if it is held that the Labour Court/ Industrial Tribunal has wide jurisdiction to alter service conditions, it can exercise such powers subject to the recruitment rules, availability of sanctioned posts and subject to the grant and limits of budgetary provisions. When there is no permanent post, no direction can be given to the authorities to absorb daily wage employees by creating new posts. It is the common phenomenon in the case of Nagarpalikas/ municipalities Government Corporations where such appointments are made on political considerations. The parties in power may recruit their own persons as daily rated employees and thereafter by seeking orders from the Court, they want to absorb such employees on permanent establishment. Time and again, such practice is deprecated in so many words in the judgments referred by us. The Panchayats, Municipalities, Municipal Corporations or Government Corporations as well as Government establishments are facing severe financial crisis

only because of such staff which may be required for the time being, but to make them permanent would definitely adversely affect the financial substratum of respective organisations and the the Courts should not be party to such illegal and irregular appointments by allowing them to be continued at the cost of public exchequer. We are conscious of the fact that by not approving the appointments of such daily wagers, it will be very difficult for them to survive and the question of their livelihood would arise. Keeping this aspect in mind, we do feel that in appropriate cases, their interests are required to be protected. We accordingly give following guidelines.

(1) If casual workers or daily rated workers are not required by the Local bodies and whose services are likely to be terminated, they should be relieved on the principle of "last come, first go". In the event of filling up the posts in future, those who are eligible and qualified from and amongst the relieved workmen shall be preferred by waiving the age limit.

(2) If the workmen who have continued for years as temporary employees, in the event of their termination, the authorities will see that no unqualified person is appointed in their place.

(3) The question of regularisation can also be considered by the authorities before terminating services provided the workers are eligible on the sanctioned posts.

(4) If the posts are not sanctioned, the authorities may take such steps which are necessary in accordance with the provisions of law/ rules/ circulars within the budgetary provisions.

12.1.15 In view of the above discussion, we answer the question referred to us as under:

(i) The Labour Court/Industrial Tribunal has no jurisdiction to issue direction or pass an award regularising services of employees of a Municipality or local authority without there being any 'sanctioned set up' and no person can be regularised if such a person had entered service without following selection process under

the title of daily rated employee.

(ii) In view of our answer to the above question, the judgment rendered by Division Bench in the case of Kalol Municipality Vs. Shantaben, reported in 1993(2) GLR 997 is now no longer a good law in view of subsequent decisions rendered by the Apex Court and more particularly the decision in the case of N.S.Giri Vs. Corporation of State of Mangalore, AIR 1999 SC 1958.The subsequent decision rendered by the Division Bench of this Court in the case of Halvad Nagarpalika and ors. Vs. Jani Dipakbhai Chandravadanbhai and ors., reported in (2003) 2 GHCJ 397 is held to be a good law.

5. In the result, there are no merits in the petition and accordingly the same is rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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